

Part 17

Procurement Appeals Board

63G-6a-1701 Title.

This part is known as "Procurement Appeals Board."

Enacted by Chapter 347, 2012 General Session

63G-6a-1702 Appeal to Utah State Procurement Policy Board -- Appointment of procurement appeals panel -- Proceedings.

- (1) This part applies to all procurement units other than:
 - (a) a legislative procurement unit;
 - (b) a judicial procurement unit;
 - (c) a nonadopting local government procurement unit; or
 - (d) a public transit district.
- (2)
 - (a) Subject to Section 63G-6a-1703, a party to a protest involving a procurement unit other than a procurement unit listed in Subsection (1)(a), (b), (c), or (d) may appeal the protest decision to the board by filing a written notice of appeal with the chair of the board within seven days after:
 - (i) the day on which the written decision described in Section 63G-6a-1603 is:
 - (A) personally served on the party or the party's representative; or
 - (B) emailed or mailed to the address or email address provided by the party under Subsection 63G-6a-1602(3); or
 - (ii) the day on which the 30-day period described in Subsection 63G-6a-1603(9) ends, if a written decision is not issued before the end of the 30-day period.
 - (b) A person appealing a debarment or suspension of a procurement unit other than a procurement unit listed in Subsection (1)(a), (b), (c), or (d) shall file a written notice of appeal with the chair of the board no later than seven days after the debarment or suspension.
 - (c) A notice of appeal under Subsection (2)(a) or (b) shall:
 - (i) include the address of record and email address of record of the party filing the notice of appeal; and
 - (ii) be accompanied by a copy of any written protest decision or debarment or suspension order.
- (3) A person may not base an appeal of a protest under this section on a ground not specified in the person's protest under Section 63G-6a-1602.
- (4) A person may not appeal from a protest described in Section 63G-6a-1602, unless:
 - (a) a decision on the protest has been issued; or
 - (b) a decision is not issued and the 30-day period described in Subsection 63G-6a-1603(9), or a longer period agreed to by the parties, has passed.
- (5) The chair of the board or a designee of the chair who is not employed by the procurement unit responsible for the solicitation, contract award, or other action complained of:
 - (a) shall, within seven days after the day on which the chair receives a timely written notice of appeal under Subsection (2), and if all the requirements of Subsection (2) and Section 63G-6a-1703 have been met, appoint:
 - (i) a procurement appeals panel to hear and decide the appeal, consisting of at least three individuals, each of whom is:

- (A) a member of the board; or
 - (B) a designee of a member appointed under Subsection (5)(a)(i)(A), if the designee is approved by the chair; and
 - (ii) one of the members of the procurement appeals panel to be the chair of the panel;
 - (b) may:
 - (i) appoint the same procurement appeals panel to hear more than one appeal; or
 - (ii) appoint a separate procurement appeals panel for each appeal;
 - (c) may not appoint a person to a procurement appeals panel if the person is employed by the procurement unit responsible for the solicitation, contract award, or other action complained of; and
 - (d) shall, at the time the procurement appeals panel is appointed, provide appeals panel members with a copy of the protest officer's written decision and all other records and other evidence that the protest officer relied on in reaching the decision.
- (6) A procurement appeals panel described in Subsection (5) shall:
- (a) consist of an odd number of members;
 - (b) conduct an informal proceeding on the appeal within 60 days after the day on which the procurement appeals panel is appointed:
 - (i) unless all parties stipulate to a later date; and
 - (ii) subject to Subsection (8);
 - (c) at least seven days before the proceeding, mail, email, or hand-deliver a written notice of the proceeding to the parties to the appeal; and
 - (d) within seven days after the day on which the proceeding ends:
 - (i) issue a written decision on the appeal; and
 - (ii) mail, email, or hand-deliver the written decision on the appeal to the parties to the appeal and to the protest officer.
- (7)
- (a) The deliberations of a procurement appeals panel may be held in private.
 - (b) If the procurement appeals panel is a public body, as defined in Section 52-4-103, the procurement appeals panel shall comply with Section 52-4-205 in closing a meeting for its deliberations.
- (8) A procurement appeals panel may continue a procurement appeals proceeding beyond the 60-day period described in Subsection (6)(b) if the procurement appeals panel determines that the continuance is in the interests of justice.
- (9) A procurement appeals panel:
- (a) shall, subject to Subsection (9)(c), consider the appeal based solely on:
 - (i) the protest decision;
 - (ii) the record considered by the person who issued the protest decision; and
 - (iii) if a protest hearing was held, the record of the protest hearing;
 - (b) may not take additional evidence;
 - (c) notwithstanding Subsection (9)(b), may, during an informal hearing, ask questions and receive responses regarding the appeal, the protest decision, or the record in order to assist the panel to understand the appeal, the protest decision, and the record; and
 - (d) shall uphold the decision of the protest officer, unless the decision is arbitrary and capricious or clearly erroneous.
- (10) If a procurement appeals panel determines that the decision of the protest officer is arbitrary and capricious or clearly erroneous, the procurement appeals panel:
- (a) shall remand the matter to the protest officer, to cure the problem or render a new decision;
 - (b) may recommend action that the protest officer should take; and

- (c) may not order that:
 - (i) a contract be awarded to a certain person;
 - (ii) a contract or solicitation be cancelled; or
 - (iii) any other action be taken other than the action described in Subsection (10)(a).
- (11) The board shall make rules relating to the conduct of an appeals proceeding, including rules that provide for:
 - (a) expedited proceedings; and
 - (b) electronic participation in the proceedings by panel members and participants.
- (12) The Rules of Evidence do not apply to an appeals proceeding.

Amended by Chapter 355, 2016 General Session

63G-6a-1703 Requirement to pay a security deposit or post a bond -- Exceptions -- Amount -- Forfeiture of security deposit or bond.

- (1) A person who files a notice of appeal under Section 63G-6a-1702 shall, before the expiration of the time provided under Subsection 63G-6a-1702(2) for filing a notice of appeal, pay a security deposit or post a bond with the office of the protest officer.
- (2) The amount of a security deposit or bond required under Subsection (1) is:
 - (a) for an appeal relating to an invitation for bids or request for proposals and except as provided in Subsection (2)(b)(ii):
 - (i) \$20,000, if the total contract value is under \$500,000;
 - (ii) \$25,000, if the total contract value is \$500,000 or more but less than \$1,000,000;
 - (iii) \$50,000, if the total contract value is \$1,000,000 or more but less than \$2,000,000;
 - (iv) \$95,000, if the total contract value is \$2,000,000 or more but less than \$4,000,000;
 - (v) \$180,000, if the total contract value is \$4,000,000 or more but less than \$8,000,000;
 - (vi) \$320,000, if the total contract value is \$8,000,000 or more but less than \$16,000,000;
 - (vii) \$600,000, if the total contract value is \$16,000,000 or more but less than \$32,000,000;
 - (viii) \$1,100,000, if the total contract value is \$32,000,000 or more but less than \$64,000,000;
 - (ix) \$1,900,000, if the total contract value is \$64,000,000 or more but less than \$128,000,000;
 - (x) \$3,500,000, if the total contract value is \$128,000,000 or more but less than \$256,000,000;
 - (xi) \$6,400,000, if the total contract value is \$256,000,000 or more but less than \$512,000,000;
 - and
 - (xii) \$10,200,000, if the total contract value is \$512,000,000 or more; or
 - (b) \$20,000, for an appeal:
 - (i) relating to any type of procurement process other than an invitation for bids or request for proposals;
 - (ii) relating to an invitation for bids or request for proposals, if the estimated total contract value cannot be determined; or
 - (iii) of a debarment or suspension.
- (3)
 - (a) For an appeal relating to an invitation for bids, the estimated total contract value shall be based on:
 - (i) the lowest responsible and responsive bid amount for the entire term of the contract, excluding any renewal period, if the bid opening has occurred;
 - (ii) the total budget for the procurement item for the entire term of the contract, excluding any renewal period, if bids are based on unit or rate pricing; or
 - (iii) if the contract is being rebid, the historical usage and amount spent on the contract over the life of the contract.

- (b) For an appeal relating to a request for proposals, the estimated total contract value shall be based on:
 - (i) the lowest cost proposed in a response to a request for proposals, considering the entire term of the contract, excluding any renewal period, if the opening of proposals has occurred;
 - (ii) the total budget for the procurement item over the entire term of the contract, excluding any renewal period, if opened cost proposals are based on unit or rate pricing; or
 - (iii) if the contract is being reissued, the historical usage and amount spent on the contract over the life of the contract that is being reissued.
- (4) The protest officer shall:
 - (a) retain the security deposit or bond until the protest and any appeal of the protest decision is final;
 - (b) as it relates to a security deposit:
 - (i) deposit the security deposit into an interest-bearing account; and
 - (ii) after any appeal of the protest decision becomes final, return the security deposit and the interest it accrues to the person who paid the security deposit, unless the security deposit is forfeited to the general fund of the procurement unit under Subsection (5); and
 - (c) as it relates to a bond:
 - (i) retain the bond until the protest and any appeal of the protest decision becomes final; and
 - (ii) after the protest and any appeal of the protest decision becomes final, return the bond to the person who posted the bond, unless the bond is forfeited to the general fund of the procurement unit under Subsection (5).
- (5) A security deposit that is paid, or a bond that is posted, under this section shall forfeit to the general fund of the procurement unit if:
 - (a) the person who paid the security deposit or posted the bond fails to ultimately prevail on appeal; and
 - (b) the procurement appeals panel finds that the protest or appeal is frivolous or that its primary purpose is to harass or cause a delay.

Amended by Chapter 355, 2016 General Session

63G-6a-1704 Discontinued appeal with prejudice, except as authorized.

After notice of an appeal to the board is filed under Section 63G-6a-1702, no party may discontinue the appeal without prejudice, except as authorized by the procurement appeals panel appointed for the appeal.

Amended by Chapter 445, 2013 General Session

63G-6a-1705 Factual determination of procurement appeals panel final and conclusive.

A determination of an issue of fact by a procurement appeals panel may not be overturned on appeal, unless the determination is arbitrary and capricious or clearly erroneous.

Amended by Chapter 91, 2012 General Session

Renumbered and Amended by Chapter 347, 2012 General Session

Amended by Chapter 347, 2012 General Session, (Coordination Clause)

63G-6a-1706 Dismissal of an appeal not filed in compliance with requirements.

- (1) The chair of the board shall dismiss an appeal filed under Section 63G-6a-1702 if the person filing the appeal fails to comply with any of the requirements of Subsection 63G-6a-1702(2) or Section 63G-6a-1703.
- (2) A procurement appeals panel may dismiss an appeal that is assigned to the procurement appeals panel if the appeal is not filed in accordance with the requirements of this chapter.

Amended by Chapter 196, 2014 General Session